

CONSTITUTIONAL VIOLATION COMMITTED BY STATE OFFICIALS...

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name STAICH IVAN V.
(Last) (First) (Initial)

Prisoner Number #E-10079.

Institutional Address P.O.Box 689, Soledad, Ca. 93960

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IVAN VON STAICH,

(Enter the full name of plaintiff in this action.)

vs.

Ben Curry, et al.,

(Enter the full name of respondent(s) or jailor in this action)

See Exhibit "B" for Cal. Supreme Court denial.

Case No. 08 2068
(To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

DELIBERATE VIOLATION OF
PETITIONER'S STATUTORY
RIGHT TO A FAIR & IMPARTIAL
HEARING BEFORE THE LOCAL
COURT UNDER P.C. §2966 (b);

Read Comments Carefully Before Filling In

DELIBERATE REFUSAL OF STATE COURTS TO FOLLOW THE MANDATES

When and Where to File SET FORTH IN Jackson v. Indiana, 406 U.S. 715, 737-738 (1972); Baxstrom v. Herold, 383 U.S. 107, 111-112 (1966);

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

DELIBERATE REFUSAL OF STATE COURTS TO FOLLOW THE MANDATES
 SET FORTH IN Jackson v. Indiana, 406 U.S. 715, 737-738
 (1972); Baxstrom v. Herold, 383 U.S. 107, 111-112 (1966);
Humphry v. Cady, 405 U.S. 504, 511 (1972);
Vitek v. Jones, 445 U.S. 480, 492 (1980).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda

County Superior Court, Oakland) ORANGE COUNTY SUPERIOR COURT
700 Civic Center Dr. West
Santa Ana, Ca. 92701

Court

Location

(b) Case number, if known C-53851.

(c) Date and terms of sentence Arrested Dec. 7, 1983 and
sentencec May 30, 1986.

(d) Are you now in custody serving this term? (Custody means being in jail, on
 parole or probation, etc.) Yes ☒ No ☐

Where?

Name of Institution: CTF-Soledad State Prison

Address: P.O.Box 689, Soledad, Ca. 93960.

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Currently serving a one count second degree murder under Cal.

Penal Code §190. Note: Petitioner has now served over 35 years

in prison with all credit calculations, and was just found to be
a danger to public safety by the BPH on May 10, 2007, without
justification for this action under CCR §2281(a).

DELIBERATE REFUSAL OF STATE COURTS TO FOLLOW THE MANDATES
 SET FORTH IN Jackson v. Indiana, 406 U.S. 715, 737-738
 (1972); Baxstrom v. Herold, 383 U.S. 107, 111-112 (1966);
Hunpry v. Cady, 405 U.S. 504, 511 (1972);
Vitek v. Jones, 445 U.S. 480, 492 (1980).

3. Did you have any of the following?

Arraignment: Yes X No

Preliminary Hearing: Yes X No

Motion to Suppress: Yes No X

4. How did you plead?

Guilty Not Guilty X Nolo Contendere

Any other plea (specify)

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone Judge alone on a transcript

6. Did you testify at your trial? Yes No X

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes X No

(c) Time of plea Yes No

(d) Trial Yes X No

(e) Sentencing Yes X No

(f) Appeal Yes X No

(g) Other post-conviction proceeding Yes X No

8. Did you appeal your conviction? Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No

Year: 1989. Result: THE VERDICT AND SENTENCE ARE AFFIRMED

Supreme Court of California Yes X No

Year: 1989. Result: PETITION FOR REVIEW DENIED

Any other court Yes No X

Year: Result:

(b) If you appealed, were the grounds the same as those that you are raising in this

DELIBERATE REFUSAL OF STATE COURTS TO FOLLOW THE MANDATES
 SET FORTH IN Jackson v. Indiana, 406 U.S. 715, 737-738
 (1972); Baxstrom v. Herold, 383 U.S. 107, 111-112 (1966);
Hunpry v. Cady, 405 U.S. 504, 511 (1972);
Vitek v. Jones, 445 U.S. 480, 492 (1980).

1 petition? Yes _____ No X

2 (c) Was there an opinion? Yes X No _____

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes _____ No X

5 If you did, give the name of the court and the result:

6 _____
 7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
 9 this conviction in any court, state or federal? Yes _____ No X

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
 11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
 12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
 13 for an order authorizing the district court to consider this petition. You may not file a second or
 14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
 15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
 17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: " N/A DIRECT APPEAL FROM JURY TRIAL "

19 Type of Proceeding: _____

20 Grounds raised (Be brief but specific):

21 a. _____

22 b. _____

23 c. _____

24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

DELIBERATE REFUSAL OF STATE COURTS TO FOLLOW THE MANDATES
 SET FORTH IN Jackson v. Indiana, 406 U.S. 715, 737-738
 (1972); Baxstrom v. Herold, 383 U.S. 107, 111-112 (1966);
Hunpry v. Cady, 405 U.S. 504, 511 (1972);
Vitek v. Jones, 445 U.S. 480, 492 (1980).

- a. _____
- b. _____
- c. _____
- d. _____

Result: _____ Date of Result: _____

III. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific): None.

- a. _____
- b. _____
- c. _____
- d. _____

Result: _____ Date of Result: _____

IV. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific): None.

- a. _____
- b. _____
- c. _____
- d. _____

Result: None. Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No x

Name and location of court: None.

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
 3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
 4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Petitioner Incorporates the attached Habeas Petition

6 Setting Forth Grounds For Relief As If Fully Set Forth Herein.

7 Supporting Facts: See Attached Habeas Petition.

11 Claim Two: Petitioner Incorporates the attached Habeas Petition

12 Setting Forth Grounds For Relief As If Fully Set Forth Herein.

13 Supporting Facts: See Attached Habeas Petition.

17 Claim Three:

19 Supporting Facts:

23 If any of these grounds was not previously presented to any other court, state briefly which

24 grounds were not presented and why: See attached petition.

25 ALL THE RELEVANT FACTS AND UNITED STATES SUPREME COURT CITATIONS
 26 HAVE BEEN PRESENTED TO ALL THREE STATE COURTS, WHICH REFUSE TO
 27 FOLLOW THE MANDATES THEREIN. PETITIONER HAS A U.S. SUPREME COURT
 28 MANDATED RIGHT TO A JURY TRIAL IN THE LOCAL STATE COURT PROVING
HE IS NOT A DANGER TO PUBLIC SAFETY. SEE Baxstrom v. Herold, 383
U.S. 107, 111-112 (1966); Jackson v. Indiana, 406 U.S. 715, 737-
738 (1972); Humpry v. Cady, 405 U.S. 504, 511 (1972); Vitek v.
Jones, 445 U.S. 480, 492 (1980).

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 Please see attached habeas petition for all claims.

5
6
7 Do you have an attorney for this petition?

Yes _____ No ☒

8 If you do, give the name and address of your attorney:

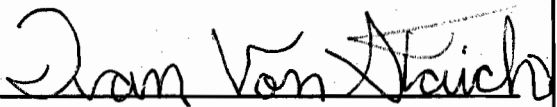
9 Petitioner is presenting these claims in Pro Se.

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

4-7-08

14 Date

12
13 

Signature of Petitioner

15 IVAN VON STAICH
16 Petitioner In Pro Se
Without Bar Licensed Counsel

17 DELIBERATE REFUSAL OF STATE COURTS TO FOLLOW THE MANDATES
18 SET FORTH IN Jackson v. Indiana, 406 U.S. 715, 737-738
19 (1972); Baxstrom v. Herold, 383 U.S. 107, 111-112 (1966);
20 Hunpry v. Cady, 405 U.S. 504, 511 (1972);
Vitek v. Jones, 445 U.S. 480, 492 (1980).

(Rev. 6/02)

1 IVAN VON STAICH
2 Prison No. E-10079 CW-137L
3 Central Training Facility
4 Post Office Box 689
5 Soledad, Ca. 93960

6 (Petitioner In Pro Se)

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9 * * *

10 IVAN VON STAICH,

11 Petitioner,

12 v.

13 Ben Curry, Warden CTF-Soledad
14 State Prison, et al.,

15 Defendants.

Case No. _____

PETITIONER'S FEDERAL DUE
PROCESS RIGHTS ARE BEING
DENIED BY STATE OFFICIALS
WHO ARE KEEPING PETITIONER
IN PRISON FOR THE REST OF
LIFE, BASE ON AN ALLEGED
CURRENT DANGEROUSNESS TO
PUBLIC SAFETY, WITHOUT ANY
MDO HEARING SHOWING THAT
PETITIONER IS CURRENTLY A
DANGEROUS PERSON

17 I. INTRODUCTION

18 Petitioner Ivan Von Staich, maintains that California
19 BPH Commissioners are currently illegally holding him in prison
20 for the rest of his life based solely on the relevant language
21 set forth in Cal. Penal Code §3041 subd. (b). The relevant
22 language of Cal. Penal Code §3041 (b) being used to keep
23 Petitioner in prison for life is as follows: "a panel shall
24 set a release date unless it determines that the gravity of
25 the current convicted offense or offenses, or the timing and
26 gravity of the current or past convicted offense or offenses,
27 is such that consideration of the public safety requires a

1 more lengthy period of incarceration." Petitioner also
2 maintains that Cal. Code Regs. tit. 15, §2281(A) is used in
3 combination with Cal. Penal Code §3041 subd. (b), and together
4 the language therein is used to find a prisoner currently
5 poses a threat to public safety. In accordance with Cal.
6 Penal Code §2966 subd. (b) any prisoner can challenge the
7 current threat to public safety used by the BPH Commissioners.
8 However, because the BPH Commissioners have repealed the BPH
9 hearing process as set forth in Cal. Code Regs. tit. 15,
10 therefore, inmates now have absolutely no other remedy to
11 challenge the BPH hearing or any appeal system to request
12 §2966 subd. (b) MDO remedy, with the exception of the state
13 and federal courts. See Cal. Code Regs. tit. 15, §3901.5.1
14 Parole Hearing Appeal Procedures (Repealed 4-15-03); also
15 every other area dealing with inmate requests for MDO hearings
16 under the appeal process have been completely repealed, such
17 as §3901.5.2; §3901.5.3; §3901.5.4; §3901.5.6; §3901.5.7
18 (Repealed on 4-15-03). Therefore, there is NO viable appeal
19 system available for indeterminately sentenced inmates to
20 request a hearing or challenge the BPH Commissioners findings
21 of current dangerousness to public safety.

22 Petitioner is requesting a fair and impartial hearing
23 in accordance with the mandates set forth in Jackson v.
24 Indiana, 406 U.S. 715, pp. 737-738, 92 S.Ct. 1845, 31 L.Ed.2d
25 435 (1972); Humpry v. Cady, 405 U.S. 504, 511, 92 S.Ct. 1048,
26 1053 (1972); and Baxstrom v. Herold, 383 U.S. 107, 111-112,
27 86 S.Ct. 760, 15 L.Ed.2d 620 (1966) (that mandates the right
28

1 to a jury determination on "current dangerousness" to public
 2 safety, which is due to the inmate nearing the end of a
 3 sentence.) Petitioner is challenging the BPH Commissioners
 4 May 9-10, 2007 parole hearing where the Commissioners denied
 5 parole because Petitioner is currently a threat to public
 6 safety after nearly 25 years of incarceration.

7 II. MEMORANDUM OF POINTS AND AUTHORITIES

8 A. Petitioner's Indeterminate Sentence is Covered Under Cal.
 9 Penal Code §2966 subd. (b).

10 Petitioner has requested a jury trial to prove he is
 11 not a threat to public safety as set forth under Cal. Penal
 12 Code §2966 subd. (b).^{1/} Petitioner is currently serving an
 13 indeterminate term based on his 1983 one count second degree
 14 murder conviction. See Cal. Penal Code §190. The California
 15 Courts have recognize that the provisions of Cal. Penal Code

16
 17 Fn 1/ Petitioner alleges that he has no administrative remedy to request
 18 a BPT hearing under Cal. Penal Code §2966 subd. (a), which states: "A
 19 prisoner may request a hearing before the Board of Prison Terms, and the
 20 board **"SHALL"** conduct a hearing if so requested, for the purpose of proving
 21 that the prisoner meets the criteria in Section 2962." Because the BPH
 22 Commissioners on May 10, 2007 found Petitioner unsuitable for parole based
 23 solely on the fact that he poses a threat to public safety, the BPH
 24 Commissioners must backup that finding and therefore, Petitioner now invokes
 25 his right to a "jury trial" in accordance with Cal. Penal Code §2966 subd.
 26 (b), which states: "A prisoner who disagrees with the determination of
 27 the Board of Prison Terms that he or she meets the criteria of Section
 28 2962, may file in the superior court of the county in which he or she is
 incarcerated or is being treated a petition for a hearing on whether he
 or she, as of the date of the Board of Prison Terms hearing, met the
 criteria of Section 2962." When the BPH Commissioners decided they were
 going to deny parole by stating Petitioner posed a threat to public safety,
 they were in fact making a statement that Petitioner was mentally unfit
 to be a part of society again. (See May 9-10, 2007 BPH transcripts where
 the Commissioners stated on the record that Petitioner's current
 dangerousness posed a threat to public safety, attached hereto as Exhibit
 "A".)

1 §2966 subd. (b) applies to all prisoners whether sentenced
2 under a determinate term under P.C. §1170 or under P.C. §1168
3 as an indeterminate term enacted at an earlier date. People
4 v. Gibson (1988) 252 Cal.Rptr. 56, 58 fn. 7.

5 B. Petitioner Maintains That an "MDO" Hearing Based on a
6 Criminal Conviction is not a Civil Hearing and Therefore,
a Jury Trial Determination in This Case is Warranted.

7 Petitioner maintains that his requested "MDO" assessment
8 in the local superior court is not considered a civil hearing
9 and should be granted. See People v. Coronado (Cal.App. 2
10 Dist. 1994) 33 Cal.Rptr.2d 835, 838, 28 Cal.App.4th 1402
11 ("Mentally Disordered Offender (MDO) has been convicted of
12 a felony and will be released to parole absent MDO finding,
13 and this is not civil in nature even though legislature has
14 so declared it in the penal code section pertaining to MDO
15 proceedings"); also see Conservatorship of Hofferber (Cal.1980)
16 28 Cal.3d 161, 167 Cal.Rptr. 854, 866 ("Involuntary confinement
17 for mental illness or dangerousness, whether civil or criminal,
18 involves loss of liberty and substantial stigma. Fact-finding
19 error must be minimized when such drastic consequences are
20 at stake. Hence, the facts that trigger confinement must
21 generally be proved to a unanimous jury beyond a reasonable
22 doubt"); and Conservatorship of In re Ben C. (Cal.2007) 40
23 Cal.4th 529, 53 Cal.Rptr.3d 856, 860 ("It is incarceration
24 against one's will, whether it is called "criminal" or "civil."
25 In re Gault (1967) 387 U.S. 1, 50, 87 S.Ct. 1428, 18 L.Ed.2d
26 527.)

1 C. Petitioner Maintains That in Accordance the United States
2 Supreme Court he is Entitled to a Jury Trial Based on the
3 BPH Commissioners Assessment That Petitioner is Currently
4 a Threat to Public Safety, and That Petitioner Would Have
5 Been Released if not for the BPH Commissioners Public Safety
6 Current Dangerousness Assessment.

7
8 Petitioner absolutely maintains that he is entitled to
9 a jury trial to prove whether he is currently dangerous and
10 a threat to public safety. Because Petitioner has served
11 beyond his minimum 15 year sentence for second degree murder.
12 See Hayward v. Marshall, 512 F.3d 536, 543 (9th Cir.2008)
13 (Some evidence of the existence of a particular factor "DOES
14 NOT" necessarily equate to some evidence the parolee's release
15 unreasonably "endangers the public safety"); also see Vitek
16 v. Jones, 445 U.S. 480, 492, 100 S.Ct. 1254, 1263, 63 L.Ed.2d
17 552 (1980) ("a convicted felon serving his sentence has a
18 liberty interest, not extinguished by his confinement as a
19 criminal, in not being transferred to a mental institution
20 and hence classified as mentally ill without appropriate
21 procedures to prove he was mentally ill"); and Baxstrom v.
22 Herold, 383 U.S. 107, 111-112, 86 S.Ct. 760, 15 L.Ed.2d 620
23 (1966) ("a convicted criminal who allegedly was mentally ill
24 was entitled to release at the end of his term unless the
25 State committed him in a civil proceeding. There is no
26 conceivable basis for distinguishing the commitment of a person
27 who is nearing the end of a penal term from all other civil
28 commitments"); and Jackson v. Indiana (1972) 406 U.S. 715,
737-738, 92 S.Ct. 1845, 1857-1858, 32 L.Ed.2d 435 ("incompetent
criminal defendant is "gravly disabled" because he is currently

1 dangerous as a result of a mental disease, defect, or disorder
2 must follow a hearing addressed to that specific issue.")

3 Petitioner has served beyond his minimum 15 year sentence
4 and is currently being held in the CDC&R prison system as
5 a threat to public safety under Cal. Penal Code §3041 subd.
6 (b). As stated in Baxstrom, 383 U.S. at 111-12, any person
7 who is nearing the end of a penal term is entitled to a jury
8 trial to prove the person does not have a mental disease,
9 and can be released on parole at no threat to public safety.
10 Petitioner has served beyond his minimum 15 year term as
11 required under Hayward, 512 F.3d at 566. Also with all credits
12 calculated in this case Petitioner has served over 35 years
13 on this sentence, which is beyond any first degree murder
14 sentence. Therefore, Petitioner is at the end of his sentence
15 as stated in Baxstrom and should be afforded a due process
16 hearing where Petitioner can refute the BPH Commissioners
17 current dangerousness assessment on May 9-10, 2007, which
18 is the sole reason Petitioner is being held in prison. The
19 BPH Commissioners have not presented any evidence that
20 Petitioner is a current danger to public safety and that this
21 alleged current dangerousness is based on some type of mental
22 disease or personality disorder. See Heller v. Doe (1993)
23 509 U.S. 312, 314-315, 113 S.Ct. 2637, 125 L.Ed.2d 257 (Proof
24 of dangerousness requires additional factors, such as 'mental
25 illness' or 'personality disorder.')

26 D. Petitioner is Being Denied a Fair & Impartial MDO Hearing
27 to Prove he is not Currently a Danger to Public Safety.

1 Petitioner is being denied a fair & impartial hearing
2 within the local court under Cal. Penal Code §2966 subd. (b).
3 Petitioner maintains that the sole reason he is being held
4 in prison past his minimum second degree murder sentence is
5 due to the BPH Commissioners assessment that he is currently
6 a danger to public safety under Cal. Penal Code §3041 subd.
7 (b). Petitioner maintains that he is not a threat to anyone
8 in the public and should be released from prison. The Supreme
9 Court stated in Zinerman v. Burch, "the Due Process Clause
10 contains a substantive component that bars certain arbitrary,
11 wrongful government actions regardless of the fairness of
12 the procedures used to implement them." 492 U.S. 113, 125,
13 110 S.Ct. 975, 983, 108 L.Ed.2d 100 (1990); and Daniels v.
14 Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 664-665, 88 L.Ed.2d
15 662 (1986) ("Freedom from bodily restraint has always been
16 at the core of the liberty protected by the Due Process Clause
17 from arbitrary government action"); see also Youngberg v.
18 Romeo, 457 U.S. 307,, 316, 102 S.Ct. 2452, 2458, 73 L.Ed.2d
19 28 (1982); and United States v. Salerno, 481 U.S. 739, 750,
20 107 S.Ct. 2095, 2103, 95 L.Ed.2d 697 (1987) ("always been
21 careful not to minimize the importance and fundamental nature
22 of the individual's right to liberty.") In addition, "a
23 prisoner is not wholly stripped of constitutional protections
24 when he is imprisoned for a crime." Wolff v. McDonnell, 418
25 U.S. 539, 555, 94 S.Ct. 2963, 2974, 41 L.Ed.2d 935 (1974).
26 Among the constitutional protections prisoners retain are
27 those safeguarded by the Due Process Clause. Id. at 556, 94

1 S.Ct. at 2474-2475.

2 Consequently, while in custody, prisoners may not further
3 be deprived of life, liberty, or property without due process
4 of law. Id.

5 E. Petitioner Asserts that California Courts are Releasing
6 Murderers who were Found not guilty because they are Criminally
Insane at the Time They Committed Their Murder.

7 Petitioner asserts that California is releasing murderers
8 everyday of the year, which were found not guilty of murder
9 as a criminally insane person. As stated in People v. Cross
10 (CalApp. 2 Dist. 2005) 25 Cal.Rptr.3d 186, 190 ("Under Section
11 1026.2 the trial court must determine whether the applicant
12 "would be a danger to the health and safety of other, due
13 to the mental defect, or disease, if under Supervision and
14 treatment in the community." (§1026.2, subd. (e).) If the
15 court determines the applicant will not, the court "Shall"
16 order the applicant to be placed with an appropriate forensic
17 conditional release program for one year. (Ibid.) Under
18 section 1604, subdivision (c), the court also "shall" consider
19 the circumstances and nature of the criminal offense leading
20 to commitment and shall consider the person's prior criminal
21 history." Under section 1602, subdivision (a)(3), the court
22 must sepcifically approve the recomondation and plan for
23 outpatient status." Id.

24 Petitioner maintains that if murderers are being released
25 to outpatient status after less then 10 years, why is he still
26 being held as a threat to public safety after nearly 25
27 straight years. This line of reasoning makes absolutely no

1 sense. All a criminally insane person needs to be released
2 to outpatient status Cal. Penal Code §1602, subdivision (a)(3)
3 is for a psychological evaluation showing he is no longer
4 a threat to public safety. However, to the contrary, even
5 if Petitioner has an updated psychological evaluation report,
6 the BPH Commissioners just override the favorable report and
7 found the prisoners poses a current danger to public safety.
8 This action by the BPH Commissioners is hardly fair. Just
9 as inmates who are found not guilty of murder because they
10 were criminally insane, and are now being released to
11 outpatient status after a court hearing, Petitioner too should
12 be granted a fair and impartial due process hearing under
13 Cal. Penal Code §2966 subd. (b). See also Ley v. State
14 (Cal.App. 2 Dist. 2004) 8 Cal.Rptr.3d 642, 647 (where
15 criminally insane at time of crime murderer ordered released
16 to outpatient status under §1604 et seq..)

17 Conclusion

18 Wherefore, based on the foregoing, Petitioner should
19 be granted a fair and impartial hearing in the local court
20 where he can present evidence that is not a threat to public
21 safety and should be released on parole.

22 Dated this ____ day of April, 2008.

23 Respectfully Submitted,

24
25
26 IVAN VON STAICH
27 Petitioner In Pro Se
28 Without Bar Licensed Counsel

EXHIBIT "A"

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number: E-10079

IVAN STAICH)

INMATE COPY

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

MAY 9 & 10, 2007

12:58 P.M.

PANEL PRESENT:

STAN KUBOCHI, Presiding Commissioner
ED ALVORD, Deputy Commissioner

OTHERS PRESENT:

IVAN STAICH, Inmate
MATTHEW LOCKHART, Deputy District Attorney

CORRECTIONS TO THE DECISION HAVE BEEN MADE

 No See Review of Hearing
 Yes Transcript Memorandum

Sarah M. Collins, Capitol Electronic Reporting

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER ALVORD: Okay. We're back on
4 the record. The time is 3:12.

5 PRESIDING COMMISSIONER KUBOCHI: We're back on
6 record on the Subsequent Parole Consideration Hearing of
7 Ivan Staich. And Mr. Staich, I want to advise you that
8 we reviewed all information received from the public.
9 And before giving our decision I want you to know that
10 we seriously considered all the facts that you have told
11 us. And in reviewing Section 2281, I think it's
12 informative in regard to the factors that we consider
13 because you have repeatedly indicated the static nature
14 of the crime that happened in 1983. And you are correct
15 in that those facts could never change.

16 And it has been many, many years since your
17 commitment to state prison. And I'm sure that that time
18 has weighed heavily on you. And Section 2281 talks
19 about and describes determination of suitability in
20 Subdivision A it says, regardless of the length of time
21 served, a life prisoner shall be found unsuitable for
22 and denied parole if, in the judgment of the Panel, the
23 prisoner will pose an unreasonable risk of danger to
24 society if released from prison.

25 IVAN STAICH E-10079 DECISION PAGE 1 5/9-10/07

EXHIBIT "B"

Court of Appeal, Sixth Appellate District - No. H032392
S160204

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re IVAN VON STAICH on Habeas Corpus

The petition for review is denied.

George, C.J., and Corrigan, J., were absent and did not participate.

**SUPREME COURT
FILED**

FEB 27 2008

Frederick K. Ohlrich Clerk

Deputy

Baxter

Acting Chief Justice

PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(C.C.P. §§ 1013(A), 2015,5)

I, Ivan Von Staich, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Ivan Von Staich, CDCR #: E-10079
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689, CELL #: C-137u
SOLEDAD, CA 93960-0689.

On 4-7-08, I served the attached:

Petition for Writ Of Habeas Corpus.

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

Attorney General Office
455 Golden Gate Ave., Suite 11000
San Francisco, Ca. 94102-7004

Northern District Federal Court
450 Golden Gate Ave.,
San Francisco, Ca. 94102-3483

Attn: Filing Clerk for Hon. Judge: Phyllis J. Hamilton

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 4-7-08

Ivan Von Staich

Ivan Von Staich, E-10079 C-137u
Declarant

F Van Von Staich
E 10079 CW-137L
P O Box 689
Solidad, Ca. 93960

RECEIVED
APR 18 2008

Northern District
OF California
450 Golden Gate